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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 *-oOo-*

9 UNITED STATES OF AMERICA)

10 Plaintiff,)

11 vs)

12 NATHAN HERRERA,)

13 Defendant.)

2:13-cr-417-KJD-GWF

PLEA AGREEMENT UNDER
FED. R. CRIM. P. 11 (c)(1)(A) and (B)

14 The United States, by and through DANIEL G. BOGDEN, United States Attorney, and
15 AMBER M. CRAIG, Assistant United States Attorney, the Defendant, NATHAN HERRERA,
16 and Defendant's attorney, BRIAN SMITH, ESQ., submit this Plea Agreement under Fed. R.
17 Crim. P. 11(c)(1)(A and B).

18 **I. SCOPE OF AGREEMENT**

19 The parties to this Plea Agreement are the United States of America and Nathan Herrera
20 (the Defendant). This Plea Agreement binds the Defendant and the United States Attorney's
21 Office for the District of Nevada. It does not bind any other prosecuting, administrative, or
22 regulatory authority, the United States Probation Office, or the Court.

23 The Plea Agreement sets forth the parties' agreement regarding criminal charges
24 referenced in the Plea Agreement and applicable sentences, fines, restitution and forfeiture. It

1 does not control or prohibit the United States or any agency or third party from seeking any other
2 civil or administrative remedies directly or indirectly against the defendant.

3 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

4 A. Guilty Plea. The Defendant knowingly and voluntarily agrees to plead guilty to
5 the following charges, as set forth in the Indictment:

6 The lesser included offense of Count 1 (which charges Conspiracy to Manufacture a
7 Controlled Substance - Marijuana Plants, in violation of 21 U.S.C. §§ 841(a)(1) and
8 (b)(1)(A)(vii) and 846): Conspiracy to Manufacture a Controlled Substance - Marijuana Plants,
9 in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 846.

10 Count 3: Maintaining Drug-Involved Premises, in violation of 21 U.S.C. § 856(a)(1).

11 At the time of sentencing, the Government agrees to move to dismiss the remaining counts of the
12 Indictment as to Defendant Nathan Herrera only.

13 B. Waiver of Trial Rights. The Defendant acknowledges that he has been advised
14 and understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain
15 rights guaranteed to all defendants by the laws and the Constitution of the United States.
16 Specifically, the defendant is giving up:

17 1. The right to proceed to trial by jury on all charges, or to a trial by a judge
18 if the defendant and the United States both agree;

19 2. The right to confront the witnesses against the defendant at such a trial,
20 and to cross-examine them;

21 3. The right to remain silent at such a trial, with assurance that his silence
22 could not be used against him in any way;

1 4. The right to testify in his own defense at such a trial if he so chooses;

2 5. The right to compel witnesses to appear at such a trial and testify in the
3 defendant's behalf; and

4 6. The right to have the assistance of an attorney at all stages of such
5 proceedings.

6 C. Withdrawal of Guilty Plea. The Defendant will not seek to withdraw his guilty
7 pleas after he has entered them in court.

8 D. Additional Charges. The United States agrees not to bring any additional charges
9 against the Defendant arising out of the investigation in the District of Nevada which culminated
10 in this Plea Agreement and based on conduct known to the United States.

11 **III. ELEMENTS OF THE OFFENSES**

12 Count 1: The elements of Conspiracy to Manufacture a Controlled Substance –
13 Marijuana Plants, under 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(vii) and 846 are:

14 1. There was an agreement between two or more persons to a crime charged in the
15 indictment;

16 2. The defendant became a member of the conspiracy knowing of at least one of its
17 objects and intending to help accomplish it; and

18 3. The offense involved one thousand (1,000) or more marijuana plants.

19 See NINTH CIR. MANUEL OF MODEL JURY INSTR., Criminal 9.15 (2010 ed.)(modified).

20 Count 3: The elements of Maintaining Drug-Involved Premises, under 21 U.S.C.
21 §856(a)(1) are:

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1 1. The defendant knowingly maintained a place for the purpose of manufacturing
2 a controlled substance; and

3 2. The defendant knew that the place was used for such purpose.

4 *See* 21 U.S.C. §856(a)(1).

5 **IV. FACTS SUPPORTING GUILTY PLEA**

6 A. The Defendant will plead guilty because he is, in fact and under the law, guilty of
7 the crimes charged.

8 B. The Defendant acknowledges that if he elected to go to trial instead of pleading
9 guilty, the United States could prove his guilt beyond a reasonable doubt. The Defendant further
10 acknowledges that his admissions and declarations of fact set forth below satisfy every element
11 of the charged offenses.

12 C. The Defendant waives any potential future claim that the facts he admitted in this
13 Plea Agreement were insufficient to satisfy the elements of the charged offenses.

14 D. The Defendant admits and declares under penalty of perjury that the facts set forth
15 below are true and correct:

16 On or about March 25, 2013, law enforcement executed a search warrant at at 8877
17 Waltzing Waters Court, Las Vegas, Nevada. Inside the residence, law enforcement discovered a
18 large scale marijuana grow operation, comprised of grow beds, water tubs, grow lamps, various
19 grow chemicals, fertilizer, and other implements utilized in the growing and harvesting of
20 marijuana plants. Officers recovered marijuana plants, THC and THC-laced edibles, loose
21 marijuana, codeine cough syrup, hash, kief, cocaine, psilocybin mushrooms, MDMA, a .40
22 caliber Glock handgun, and a .38 caliber FIE handgun.

1 Defendant Nathan Herrera conspired and agreed with co-defendants Ali Almeda and
2 Gilberto Vasquez, Jr. to manufacture the marijuana plants found in 8877 Waltzing Waters Court,
3 and knew that they were marijuana plants or some other prohibited drug.

4 Defendant knowingly maintained the 8877 Waltzing Waters Court residence for the
5 purpose of manufacturing marijuana plants.

6 All of the foregoing occurred in the state and federal district of Nevada.

7 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

8 The facts set forth in Section IV of this Plea Agreement shall be admissible against the
9 Defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the Defendant
10 does not plead guilty or withdraws his guilty pleas, the facts set forth in Section IV of this Plea
11 Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting
12 any evidence, argument or representation offered by or on the Defendant's behalf. The
13 Defendant expressly waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410
14 regarding the use of the facts set forth in Section IV of this Plea Agreement.

15 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

16 A. Discretionary Nature of Sentencing Guidelines. The Defendant acknowledges
17 that the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing
18 Guidelines") in determining the defendant's sentence, but that the Sentencing Guidelines are
19 advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to
20 the maximum term of imprisonment permitted by statute.

21 B. Offense Level Calculations. The parties stipulate to the following calculation of
22 the Defendant's offense level under the Sentencing Guidelines, acknowledge that these
23 stipulations do not bind the Court, and agree that they will not seek to apply any other specific
24 offense characteristics, enhancements or reductions:

1	Base Offense Level [U.S.S.G. § 2D1.1(c)(8)]:	24
	Firearm Possessed [U.S.S.G. § 2D1.1(b)(1)]:	+2
2	Maintain Premises for Purpose of Manufacturing a	
	Controlled Substance [U.S.S.G. § 2D1.1(b)(12)]:	+2
3	Minor Participant [U.S.S.G. § 3B1.2(b)]:	-2
	Acceptance of Responsibility [U.S.S.G. § 3E1.1(a)]:	-2
4	Timely Plea [U.S.S.G. § 3E1.1(b)]:	-1

5	Total Offense Level:	<u>23</u>
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6 The Defendant acknowledges that the statutory maximum sentence and any statutory
7 minimum sentence limit the Court's discretion in determining the Defendant's sentence
8 notwithstanding any applicable Sentencing Guidelines provisions.

9 C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG
10 §3E1.1(a), the United States will recommend that the Defendant receive a two-level downward
11 adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts
12 establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit
13 facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails to
14 truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d)
15 provides false or misleading information to the United States, the Court, Pretrial Services, or the
16 Probation Office; (e) denies involvement in the offense or provides conflicting statements
17 regarding his involvement or falsely denies or frivolously contests conduct relevant to the
18 offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime;
19 (h) fails to appear in court; or (i) violates the conditions of pretrial release.

20 Under USSG §3E1.1(b), the United States will move for an additional one-level
21 downward adjustment for acceptance of responsibility before sentencing because the Defendant
22 communicated his decision to plead guilty in a timely manner that enabled the United States to
23 avoid preparing for trial and to efficiently allocate its resources.

1 D. Criminal History Category. The Defendant acknowledges that the Court may
2 base his sentence in part on the Defendant's criminal record or criminal history. The Court will
3 determine the Defendant's Criminal History Category under the Sentencing Guidelines.

4 E. Relevant Conduct. The Court may consider any counts dismissed under this Plea
5 Agreement and all other relevant conduct, whether charged or uncharged, in determining the
6 applicable Sentencing Guidelines range and whether to depart from that range.

7 F. Additional Sentencing Information. The stipulated Sentencing Guidelines
8 calculations are based on information now known to the parties. The parties may provide
9 additional information to the United States Probation Office and the Court regarding the nature,
10 scope, and extent of the Defendant's criminal conduct and any aggravating or mitigating facts or
11 circumstances. Good faith efforts to provide truthful information or to correct factual
12 misstatements shall not be grounds for the defendant to withdraw his guilty plea.

13 The Defendant acknowledges that the United States Probation Office may calculate the
14 Sentencing Guidelines differently and may rely on additional information it obtains through its
15 investigation. The Defendant also acknowledges that the Court may rely on this and other
16 additional information as it calculates the Sentencing Guidelines range and makes other
17 sentencing determinations, and the Court's reliance on such information shall not be grounds for
18 the Defendant to withdraw his guilty plea.

19 G. Career Offender Provision. The Defendant's base offense level could increase if
20 the Defendant qualifies as a career offender under USSG §§ 4B1.1 and 4B1.2. In that event, the
21 parties are not bound by the stipulated base offense level. Application of the career offender
22 provisions shall not be grounds for the Defendant to withdraw his guilty plea.

23 **VII. APPLICATION OF SENTENCING STATUTES**

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1 A. Maximum Penalty.

2 Count 1: The maximum penalty for Conspiracy to Manufacture a Controlled Substance-
3 Marijuana Plants, under 21 U.S.C. §§841(a)(1) and (b)(1)(B)(vii) and 846 is not more than life
4 imprisonment, with a mandatory minimum sentence of ten (10) years, a fine of not more than ten
5 million dollars (\$10,000,000), or both.

6 Count 3: The maximum penalty for Maintaining Drug-Involved Premises, under 21
7 U.S.C. §856(a)(1) is not more than twenty (20) years imprisonment, a fine of not more than one
8 five hundred thousand dollars (\$500,000), or both.

9 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in
10 18 U.S.C. § 3553(a) in determining the Defendant's sentence. However, the statutory maximum
11 sentence and any statutory minimum sentence limit the Court's discretion in determining the
12 defendant's sentence.

13 C. Parole Abolished. The Defendant acknowledges that his prison sentence cannot
14 be shortened by early release on parole because parole has been abolished.

15 D. Supervised Release. In addition to imprisonment and a fine, the Defendant will
16 be subject to a term of supervised release not to exceed 5 years. Supervised release is a period of
17 time after release from prison during which the Defendant will be subject to various restrictions
18 and requirements. If the Defendant violates any condition of supervised release, the Court may
19 order the Defendant's return to prison for all or part of the term of supervised release, which
20 could result in the Defendant serving a total term of imprisonment greater than the statutory
21 maximum prison sentence of life imprisonment.

22 E. Special Assessment. The Defendant will pay a \$100.00 special assessment per
23 count at the time of sentencing.

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1 **VIII. POSITIONS REGARDING SENTENCE**

2 The parties agreed to jointly recommend a sentence of 48 months imprisonment, unless
3 the Defendant commits any act that could result in a loss of the downward adjustment for
4 acceptance of responsibility. The Defendant acknowledges that the Court does not have to
5 follow that recommendation. Notwithstanding its agreement to recommend a 48 month
6 sentence, the United States reserves its right to defend any lawfully imposed sentence on appeal
7 or in any post-conviction litigation.

8 The Defendant will not request a sentence below 48 months, and will not seek a
9 downward adjustment pursuant to 18 U.S.C. § 3553 or USSG § 4A1.3(b)(1) from any sentence
10 the Court may impose.

11 **IX. RESTITUTION**

12 In exchange for benefits received under this Plea Agreement, the defendant agrees to
13 make full restitution in an amount to be determined by the Court for all of the losses the
14 defendant caused by his schemes or offenses, whether charged or uncharged, pled to or not, and
15 by all of his relevant conduct. 18 U.S.C. § 3663(a)(3). The Defendant cannot discharge his
16 restitution obligation through bankruptcy proceedings. The Defendant acknowledges that
17 restitution payments and obligations cannot offset or reduce the amount of any forfeiture
18 judgment imposed in this case.

19 **X. FORFEITURE**

20 Upon conviction of one or more of the controlled substance offenses alleged in the
21 Indictment, the Defendant shall forfeit to the United States, pursuant to Title 21, United States
22 Code, Section 853, any property constituting, or derived from, any proceeds obtained, directly or
23 indirectly, as a result of the said violation(s) and any property used, or intended to be used, in
24 any manner or part, to commit, or to facilitate the commission of the said violation(s).

XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS

Before or after sentencing, upon request by the Court, the United States, or the Probation Office, the Defendant will provide accurate and complete financial information, submit sworn statements, and/or give depositions under oath concerning his assets and his ability to pay. The Defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and will release funds and property under his control in order to pay any fine, forfeiture, or restitution ordered by the Court.

XII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS

A. Plea Agreement and Decision to Plead Guilty. The Defendant acknowledges that:

(1) He has read this Plea Agreement and understands its terms and conditions;

(2) He has had adequate time to discuss this case, the evidence, and this Plea Agreement with his attorney;

(3) He has discussed the terms of this Plea Agreement with his attorney;

(4) The representations contained in this Plea Agreement are true and correct, including the facts set forth in Section IV; and

(5) He was not under the influence of any alcohol, drug, or medicine that would impair his ability to understand the Agreement when he considered signing this Plea Agreement and when he signed it.

The Defendant understands that he alone decides whether to plead guilty or go to trial, and acknowledges that he has decided to enter his guilty plea knowing of the charges brought against him, his possible defenses, and the benefits and possible detriments of proceeding to trial. The Defendant also acknowledges that he decided to plead guilty voluntarily and that no one coerced or threatened him to enter into this Plea Agreement.

1 B. Waiver of Appeal and Post-Conviction Proceedings. The Defendant knowingly
2 and expressly waives: (a) the right to appeal any sentence imposed within or below the
3 applicable Sentencing Guideline range as determined by the Court; (b) the right to appeal the
4 manner in which the Court determined that sentence on the grounds set forth in 18 U.S.C. §
5 3742; and (c) the right to appeal any other aspect of the conviction or sentence and any order of
6 restitution or forfeiture.

7 The Defendant also knowingly and expressly waives all collateral challenges, including
8 any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the
9 Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective
10 assistance of counsel.

11 The Defendant reserves only the right to appeal any portion of the sentence that is an
12 upward departure from the Sentencing Guidelines range determined by the Court.

13 The Defendant acknowledges that the United States is not obligated or required to
14 preserve any evidence obtained in the investigation of this case.

15 C. Removal/Deportation Consequences. The defendant understands and
16 acknowledges that if he is not a United States citizen, then it is highly probable that he will be
17 permanently removed (deported) from the United States as a consequence of pleading guilty
18 under the terms of this Plea Agreement. The defendant has also been advised if his conviction is
19 for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the
20 United States and will not be allowed to return to the United States at any time in the future. The
21 Defendant desires to plead guilty regardless of any immigration consequences that may result
22 from his guilty plea, even if the consequence is automatic removal from the United States with
23 no possibility of returning. The Defendant acknowledges that he has specifically discussed these
24 removal/deportation consequences with his attorney.

1 **XIII. ADDITIONAL ACKNOWLEDGMENTS**

2 This Plea Agreement resulted from an arms-length negotiation in which both parties
3 bargained for and received valuable benefits in exchange for valuable concessions. It constitutes
4 the entire agreement negotiated and agreed to by the parties. No promises, agreements or
5 conditions other than those set forth in this agreement have been made or implied by the
6 Defendant, the Defendant's attorney, or the United States, and no additional promises,
7 agreements or conditions shall have any force or effect unless set forth in writing and signed by
8 all parties or confirmed on the record before the Court.

9 DANIEL G. BOGDEN
United States Attorney

11 12/9/15
12 DATED

11 Amber M. Craig
12 AMBER M. CRAIG
Assistant United States Attorney

14 10-27-15
15 DATED

14 Nathan Herrera
15 NATHAN HERRERA
16 Defendant

17 12-9-15
18 DATED

17 Brian Smith
18 BRIAN SMITH
19 Counsel for Defendant